(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

DATE: JUL 2 6 2013

Office: TEXAS SERVICE CENTER

FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. According to Part 6 of the Form I-140, the petitioner seeks employment as a "High School Math Teacher" for Most recently, the petitioner taught at High School in Maryland, until her H-1B nonimmigrant status expired on October 15, 2011. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner has established that her work as a mathematics and science teacher is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of petitioner's work would be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. Assertions regarding the overall importance of an alien's area of expertise cannot suffice to establish eligibility for a national interest waiver. *Id.* at 220. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

The petitioner filed the Form I-140 petition on April 11, 2012. The petitioner stated:

> I was hired by since November 28, 2007 – until October 15, 2011. But due to the sanction given by the Department of Labor, it was not able to grant extension to all those teachers whose H-1B visa expired from July 1, 2011 onward, with me included.

The U.S. Department of Labor invoked the debarment provisions of section 212(n)(2)(C)(i) of the Act against owing to certain immigration violations by that employer. As a result, between March 16, 2012 and March 15, 2014, USCIS cannot approve any employment-based immigrant or nonimmigrant petitions filed by This debarment means that is, temporarily, unable to file its own petition on the alien's behalf, and thus explains why labor certification is not an option in the short term. The inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the alien will serve the national interest to a substantially greater degree than do others in the same field. *NYSDOT*, 22 I&N Dec. at 218 n.5. Any waiver must rest on the petitioner's individual qualifications, rather than on the circumstances that (temporarily) prevent from filing a petition on her behalf.

The petitioner further stated:

> My expertise is a teacher in Mathematics, Algebra, Calculus, Trigonometry, Geometry, Probability Statistics, Environmental Science, Surveying, Hydrology in the College of Civil Engineering at University. . . . Our engineering students received rigorous training and differentiated instruction, their multiple intelligences were tapped, and they were guided and supervised in their thesis and projects.
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> * * *
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> At I was highly certified in teaching Mathematics to students in different levels ranging from Grade 4 to Grade 12 where I was assigned to Middle School as co-teach [sic] from 2007-2008. I was then moved to High School where I

[1] The list of debarred and disqualified employers is available on the U.S. Department of Labor's website. *See* http://www.dol.gov/whd/immigration/H1BDebarment.htm, accessed on June 28, 2013, copy incorporated into the record of proceeding.

> was assigned varied populations from regular students to students with special needs on August 2008- to October 2011.
>
> As a special Education teacher in Mathematics, I functioned as a case manager, developing Individualized Education Plan (IEP) for students and arranging meeting of parents with the IEP team, as well as monitoring students in their IEP functional Mathematics and other goals.

In an April 9, 2012 letter accompanying the petition, counsel asserted that the petitioner's national interest waiver as a high school mathematics teacher is "based on her Doctor of Education [degree] in Educational Management and Master of Arts degree in Teaching Mathematics plus over (10) years of dedicated professional experience as a Mathematics teacher." Advanced degrees and length of experience are not factors that qualify the petitioner for a national interest waiver. The advanced degree is, by definition, a fundamental requirement for classification as a member of the professions holding an advanced degree, and ten or more years of experience is a factor in establishing exceptional ability in the sciences, the arts or business (*see* 8 C.F.R. § 204.5(k)(3)(ii)(B)). Section 203(b)(2)(A) of the Act subjects both of those classifications to the job offer requirement. The national interest waiver is an additional benefit, separate from the classification sought, and therefore eligibility for the underlying classification does not imply eligibility for the additional benefit of the waiver.

Counsel further stated:

> More so, aside from her advanced degrees, the merit of [the petitioner's] request for a National Interest Waiver is based on the improvement to the United States Education more particularly in the field of Mathematics, which is one of the top priorities in the education of children in the county. As we are all aware, Federal as well as State governments are promoting the four areas of education in STEM or Science, Technology, Engineering and Math.

The overall importance of STEM education does not imply that any one teacher will play a nationally significant role by educating her students in those areas. General arguments regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual alien benefits the national interest by virtue of engaging in the field. *NYSDOT*, 22 I&N Dec. at 217. Such assertions address only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test.

Counsel also pointed to the progress demonstrated by the petitioner's students as affirmed in the letters of support submitted in her behalf. With regard to the petitioner's teaching duties, there is no evidence establishing that the benefits of her work would extend beyond her students and schools such that they might have a national impact. *NYSDOT*, 22 I&N Dec. at 217, n.3. provides examples of employment where the benefits would not be national in scope:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. In the present matter, the benefits of the petitioner's impact as a high school mathematics teacher would be primarily limited to students at local her school and, therefore, so attenuated at the national level as to be negligible. Moreover, the record lacks specific examples of how the petitioner's work as a teacher has influenced the field on a national level. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

The petitioner submitted various letters of support discussing the petitioner's work as a teacher. As some of the letters contain redundant claims already addressed in other letters, not every letter will be quoted. Instead, only selected examples will be discussed to illustrate the nature of the references' claims.

Principal High School, stated:

> It is with great pleasure that I write this letter of recommendation for [the petitioner] who currently teaches Science at High School.
>
> The petitioner has a great gift for meeting students where they are and taking them to where she needs them to be. Students respect her and appreciate all of the hard work she puts into lesson planning, evaluating their work, and interacting with them during instruction. Her attention to detail and organizational skills have made her indispensable to the faculty and staff at High School.
>
> [The petitioner] has received good evaluations and her abilities cannot be overstated. She is tireless in her efforts to create a great culture and community in our school and workplace.

Ms. comments favorably on the petitioner's teaching qualities, but Ms. does not indicate how the petitioner's impact or influence as a teacher is national in scope. In support of Ms. comment that the petitioner "has received good evaluations," the petitioner submitted copies of her "satisfactory" teacher evaluations from Middle School and High School. The petitioner, however, did not submit documentary evidence comparing her individual performance with other teachers. Moreover, there is no documentary evidence

showing that the petitioner's specific work has had significant impact outside of the schools where she has taught.

Co-chair of the Special Education Department, High School, stated:

> [The petitioner] is a former colleague. We worked together on the Special Education Department at High School for three years. Throughout those years, [the petitioner] served as both intensive and collaborative (co-teacher) instructor in the areas of Mathematics and Science.
>
> As a Special Educator, she was required to complete extensive paperwork, maintain a caseload, monitor student's progress toward mastery of their Individualized Education Plan (IEP), participate in meetings, administer formal assessments, compile data to include in reports and analyze student performance on the assessments in order to incorporate that data into his/her IEP. These duties are expected in conjunction with the daily responsibilities of a regular educator – preparing lesson plans, grading papers, presenting material to the students effectively, tutoring before/after school as needed and communicating with parents.
>
> * * *
>
> Her lessons exhibited rigor and highly motivated the students! Her departure from was a loss to students and her colleagues.

Ms. comments on the petitioner's duties and skill as a motivator, but Ms. does not indicate that the petitioner's work has had, or will continue to have, an impact outside of her classrooms and the local school system that employed her.

Special Educator and Math Teacher, High School, stated:

> [The petitioner] has been my colleague and co-teacher as Special Ed/Math teacher here in High School for more than 3 years. In my judgment, her intelligence is well above average, and she understands both students and learning process. She has a thorough knowledge of the curriculum, which combined with her excellent verbal facility, enables her to express herself and present topics very well.
>
> She has a creative imagination that allows her to make classroom works interesting to students. [The petitioner] possesses the physical energy and the drive to do a good job, however demanding in school setting. Her personal characteristics such as patience, consideration, emotional stability, and good judgment are great assets.

Mr. praises the petitioner's skills as an educator, but he fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

Dr. Mathematics Teacher, High School, stated:

> [The petitioner] has been my fellow teacher in Mathematics for about four years at High School. During this time, she was a dependable and effective teacher in the Special Education Department of the school.
>
> [The petitioner] was an asset to the department. She was always ready and willing to assist with any task in improving the academic performance of students. In addition, [the petitioner] is highly motivated in applying various teaching strategies to suit the learning needs of her students; hence, enhancing student learning.

While Dr. describes the petitioner as dependable, effective, and highly motivated, Dr. comments do not set the petitioner apart from other competent and qualified teachers, or explain how the petitioner's work has impacted the field beyond her school.

Dr. Vice President of Academic Affairs University, stated:

> It is a genuine pleasure and admiration for me to endorse [the petitioner], a masteral [sic] degree holder of this university. She is a MAT [Master of Arts in Teaching] graduate and had been involved in many research undertakings. She had rendered countless hours of her time to be the best that she could be. At all times, I found her to be dependable, reliable, hard-working, conscientious, honest, peace-loving. She would be a tremendous asset in your country and has my highest recommendation. During this entire period, she has provided excellent service.

Dr. asserted that the petitioner was "involved in many research undertakings," but Dr. fails to specifically identify the petitioner's research projects or explain how they influenced the field on a national level.

The petitioner submitted additional letters from the administration and faculty at University, stating that the petitioner worked as a "regular faculty member handling Mathematics, Sciences and Professional Engineering subjects." The letters provide information relating to the petitioner's work teaching college courses and heading the Mathematics Department at University, but they fail to provide specific examples of how the petitioner's work has influenced the field beyond the university. Regardless, the record does not indicate that the petitioner continues to perform similar activities in a university setting in the United States. The petitioner's past duties on a university's faculty are not necessarily a reliable guide for what the petitioner will do as a high school teacher.

The petitioner submitted the following:

1. Certificate of Recognition from University, congratulating the petitioner for "Perfect Attendance" in the first semester (2001-2002);

2. Certificate of Recognition from [redacted] University, [redacted] congratulating the petitioner for "Perfect Attendance" for two academic years (2002-2003 and 2003-2004);
3. Her membership card for the [redacted] Education Association;
4. Her membership certificate for the [redacted] Civil Engineers; and
5. Her membership certificate for the American Society of Civil Engineers.

Professional memberships and institutional recognition are all elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(E) and (F), respectively. As noted previously, exceptional ability in the sciences, the arts or business is not sufficient to warrant the national interest waiver. The plain language of section 203(b)(2)(A) of the Act indicates that aliens of exceptional ability are subject to the job offer requirement (including alien employment certification). Particularly significant awards may serve as evidence of the petitioner's impact and influence on her field, but the petitioner has failed to demonstrate that the awards she received for "perfect attendance" have more than local or institutional significance. In addition, there is no evidence showing that the petitioner's professional memberships are indicative of influence on the field as a whole.

The petitioner also submitted numerous certificates of participation, completion, and attendance for training courses, seminars, and conferences relating to her professional development. While taking courses and attending seminars and conferences are ways to increase one's professional knowledge and to improve as a teacher, there is nothing inherent in these activities to establish eligibility for the national interest waiver.

The director issued a request for evidence on July 31, 2012. In that notice, the director acknowledged the intrinsic merit of the petitioner's occupation, but stated that the petitioner had not satisfied the other prongs of the *NYSDOT* national interest test.

In response, counsel asserted: "The academic performance of each American student is weighed against the rest across the nation for each grade level by the United States Department of Education for the purpose of determining their competitive standing globally which crucially gauges the prospective economic condition of the United States of America." Counsel further stated:

> [T]he most tangible national benefit to be derived from a 'Highly Qualified Mathematics Teacher' is recreating a society of responsible and values-driven citizens including a highly productive and well-balanced work force that would translate the current recession adversely affecting the United States of America into a formidable economy again.

Counsel did not explain how the actions of one teacher would contribute significantly to nationwide social reform and economic recovery.

Counsel stated that the labor certification requirement is deficient because, for labor certification purposes, the Department of Labor considers a bachelor's degree, rather than a Ph.D. or master's

degree, to be the minimum educational requirement for a schoolteacher. In addition, counsel contended that Congress set new standards by passing the No Child Left Behind Act (NCLBA), which established the category of "highly qualified teachers."

Section 9101(23) of the NCLBA, 20 U.S.C. § 7801(23), defines the term "highly qualified" in reference to teachers. Sections 9101(23)(B) and (C) of the NCLBA require that a "highly qualified" teacher "holds at least a bachelor's degree." Section 9101(23)(B) of the NCLBA also refers to "highly qualified" teachers who are "new to the profession." Thus, the petitioner's master's degree, Ph.D. degree, and more than ten years of experience are not required for "highly qualified" status under the NCLBA. Counsel, therefore, did not support the claim that the labor certification process frustrates the NCLBA's mandate for schools to employ "highly qualified teachers."

Counsel stated that another teacher received a national interest waiver, and asked that the present petition "be treated in the same light." Each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). While AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished service center decisions are not similarly binding. *See* 8 C.F.R. § 103.3(c). Furthermore, counsel provided no evidence to establish that the facts of the instant petition are similar to those in the unpublished decision. Without such evidence, the assertion that both cases merit the same outcome is unwarranted. The only stated similarity is that the beneficiary of the approved petition is "also a teacher in Public School System."

The petitioner submitted President George H.W. Bush's "Remarks on Signing the Immigration Act of 1990," a March 14, 2008 article in *The New York Times* entitled "Report Urges Changes in Teaching Math," an article entitled "Importance of Science and Math Education," an article entitled "STEM Sell: Are Math and Science Really More Important Than Other Subjects?," the written testimony of Microsoft's Bill Gates before the Committee on Science and Technology of the United States House of Representatives (March 12, 2008), a copy of Section 1119 of the NCLBA, a statement by U.S. Secretary of Education Arne Duncan on the National Assessment of Educational Progress Reading and Math 2011 Results, information about STEM fields printed from the online encyclopedia *Wikipedia*, an article entitled "Effective Programs in Middle and High School Mathematics: A Best-Evidence Synthesis," an article discussing the highlights from the Trends in International Mathematics and Science Study (2007), and information about "High School Teachers" from Department of Labor's Occupational Outlook Handbook. As previously discussed, general arguments or information regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual alien benefits the national interest by virtue of engaging in the field. *NYSDOT*, 22 I&N Dec. at 217. Such assertions address only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. None of the preceding documents demonstrate that the petitioner's specific work has influenced the field as a whole.

The petitioner also submitted a copy of her September 2012 contract with "the LOCAL BOARD OF EDUCATION OF COUNTY," but the contract post-dates the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Regardless, the petitioner's receipt of this local teaching contract does not establish that the benefits of her work will be national in scope and that she will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

In addition, the petitioner submitted her "satisfactory" teacher evaluations from Middle School and High School, an outstanding faculty performance rating from University (2007), a 2004-2005 "Summary of Student Opinionnaire on Faculty Teaching" from University reflecting a highly satisfactory rating, and a 2005-2006 "Summary of Student Opinionnaire on Faculty Teaching" from University reflecting a highly satisfactory rating. Once again, the petitioner did not submit evidence comparing her individual performance with other teachers and faculty. Moreover, there is no documentary evidence showing that the petitioner's specific work has had significant impact outside of the schools where she has taught.

The petitioner's response also included a letter from Dr. Industrial Engineering Coordinator, University, stating:

> I have the distinct pleasure of having [the petitioner] as my teacher at University, during the 1999-2000 academic years. I have witnessed her unswerving dedication and commitment to make a lasting difference in every student's life that was under her. She is intelligent, knowledgeable, and caring teacher who brings out the best in every learner. She is a tremendous teacher and made an impact in my studies. I am now a successful Industrial Engineer with Master's Degree in Mathematics and I owe this success through her inspiration and guidance.

Dr. praises the petitioner's qualities as a teacher, but Dr. fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

The petitioner also submitted a letter from , Dean, College of Engineering, University, stating:

> [The petitioner] is enthusiastic and creative, yet flexible. She was quick to adapt to the way we do things here at University, but at the same time she was able to put her own spin on things and enhance the existing curriculum. She is an excellent role model for the students. [The petitioner] works cooperatively with school administrators, special support

personnel, colleagues, and parents. She complies with rules, regulations, and policies of governing agencies and supervisory personnel.

Dean and Dr. comments do not indicate that the petitioner's work has impacted the field beyond University. Congress could have created a blanket waiver for university faculty, mathematics, or special education teachers, but did not do so. Instead, the job offer requirement applies to members of the professions (such as mathematics teachers) and to aliens of exceptional ability (*i.e.*, foreign national workers who show a degree of expertise significantly above that ordinarily encountered in a given field). The preceding witnesses, however sincere their praise of the petitioner's teaching skills, did not demonstrate that the petitioner's work has had a significant impact or influence outside of the institutions that employed her. They did not address the *NYSDOT* guidelines which, as published precedent, are binding on all USCIS employees. *See* 8 C.F.R. § 103.3(c). That decision cited school teachers as an example of a profession in a field with overall national importance (education), but in which individual workers generally do not produce benefits that are national in scope. *Id.* at 217 n.3.

The director denied the petition on November 3, 2012. The director found that the petitioner failed to establish that an exemption from the requirement of a job offer would be in the national interest of the United States. The director indicated that the petitioner had not shown how her work as a public school teacher "will be national in scope" or "would benefit the United States on a national scale."

On appeal, counsel asserts that section 203(b)(2)(B)(i) of the Act does not contain clear guidance on eligibility for the waiver, and claims that Congress subsequently filled that gap with the passage of the NCLBA. Counsel notes that Congress passed the NCLBA three years after the issuance of NYSDOT as a precedent decision, and claims that the NCLBA "has in effect engraved the missing definition upon the concept of 'in the national interest'" through such legislation. Counsel, however, identifies no specific legislative or regulatory provisions in the NCLBA that exempt school teachers from *NYSDOT* or reduce its impact on them. Counsel does not support the assertion that the NCLBA modified or superseded *NYSDOT*; that legislation did not amend section 203(b)(2) of the Act. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (November 12, 1999), specifically amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians. Because Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYSDOT*, counsel has not shown that the NCLBA indirectly implies a similar legislative change.

Counsel further states:

> With respect to the E21 visa classification, INA § 203(b)(2)(A) provides in relevant part that: "Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their

> exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the **national . . . educational interests**, . . . of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

Counsel, above, highlights the phrase "national . . . educational interests," but the very same quoted passage also includes the job offer requirement, *i.e.*, the requirement that the alien's "services . . . are sought by an employer in the United States." Counsel has, thus, directly quoted the statute that supports the director's conclusion. By the plain language of the statute that counsel quotes on appeal, an alien professional holding an advanced degree is presumptively subject to the job offer requirement, even if that alien "will substantially benefit prospectively the national . . . educational interests . . . of the United States." Neither the Immigration and Nationality Act nor the NCLBA, separately or in combination, create or imply any blanket waiver for teachers.

Counsel asserts the "USCIS erred in disregarding evidence demonstrating the national scope of petitioner's proposed benefit through her effective role in serving the national educational interest of closing the achievement gap." The record, however, contains no evidence that the petitioner's efforts have significantly closed that gap. The national importance of "education" as a concept, or "educators" as a class, does not establish that the work of one teacher produces benefits that are national in scope. *See NYSDOT*, 22 I&N Dec. 217, n.3. A local-scale contribution to an overall national effort does not meet the *NYSDOT* threshold. The aggregate national effect from thousands of teachers does not give national scope to the work of each individual teacher.

Counsel continues:

> The national priority goal of closing the achievement gaps between minority and nonminority students, and between disadvantaged and more advantaged children is especially relevant in the context of [redacted] and [redacted] High School. The 2012 MSA [Maryland State Assessment] Reading results show that out of the 24 Maryland school districts [redacted] ranked near the bottom at the 'All Student' level for each MSA-covered grade level . . . .

The petitioner has worked for [redacted] since 2007, and thus had been there for a number of years before the administration of the 2012 MSA tests. Counsel does not explain how the 2012 MSA results for [redacted] (which indicate low rankings relative to other Maryland school districts) establish that the petitioner has played an "effective role . . . closing the achievement gap."

Counsel asserts that "the Director has easily dismissed the [petitioner's] incomparable accomplishments," but there is no documentary evidence showing that the petitioner's accomplishments are "incomparable" as claimed. In addition, counsel comments that *NYSDOT*'s guidelines amount to "hypotheticals [that] hold no water." By law, the USCIS does not have the discretion to reject published precedent. *See* 8 C.F.R. § 103.3(c), which indicates that precedent decisions are binding on all USCIS officers.

Counsel claims that "the Immigration Service is requiring more from the beneficiary's credentials and tantamount to having exceptional ability," even though one need not qualify as an alien of exceptional ability in order to receive the waiver. As previously discussed, the threshold for exceptional ability is distinct from the threshold for the national interest waiver. It remains that the petitioner's evidence does not facially establish eligibility for the national interest waiver. The director did not require the petitioner to establish exceptional ability in her field. Instead, the director observed that the petitioner's evidence does not show that the petitioner's work has had an influence beyond the school districts where she has worked.

Much of the appellate brief consists of general statements about educational reform and repeats earlier claims regarding perceived flaws in the labor certification process. It is within Congress's power to establish a blanket waiver for teachers, "highly qualified" or otherwise, but contrary to counsel's assertions, that waiver does not yet exist.

It is evident from a plain reading of the statute that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. The petitioner has not established that her past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *See NYSDOT*, 22 I&N Dec. 217 n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219 n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole."). On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.